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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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January 6, 1993

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

87-268

Dear Ms. Searcy:

There is submitted herewith, on behalf of Isaac S. Blonder, an original and nine copies of Comments on the Third Report and Order in Docket #87-268, as well as a reference to the proposed filing by Mr. Blonder in the immediate future of a Petition for Rule Making primarily on the subject matter of the pending ATV Rule Making Proceeding.

The qualifications of Mr. Blonder are a matter of record with the Commission, and are not resubmitted.

Should anyone, or any entity within the Commission, have any questions concerning these "comments", please communicate with the undersigned.

Very truly yours,


BENITO GAGUINE

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JAN - 7 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IN THE MATTER OF MM DOCKET NO. 87-268)
COMMENTS ON THE THIRD REPORT AND ORDER)
BY BLONDER BROADCASTING CORPORATION) MM DOCKET NO. 87-268
)
)

To: The Commission

BLONDER BROADCASTING CORP.

Isaac S. Blonder, 9 Beaver Hill Rd., Morganville, N.J., 908-946-2447

The complexity of the subject matter and the competence of the study committees are beyond casual criticism, but what is missing, is the critical eye of an old, experienced, price conscious, Chief Engineer.

This old Chief Engineer is moved to make the following prediction:

"The year 2008, if events are governed by proposals of the current docket, will arrive with every terrestrial TV station bankrupt, and with every home still enjoying TV programs on the same old NTSC TV's receivers fed by Cable or Satellite. However, to view the formerly free programs will now require a ransom to be paid by the public in the billions of dollars."

The following facts, if not refuted, have led to the foregoing forecast.

1. Human vision is adequately satisfied with the resolution, color quality, and aspect ratio of NTSC standards. This fact is more than buttressed with the enthusiastic public acceptance of VHS tape, in spite of the one-third less resolution of such tape.

2. Less than 5% of the public buys large screen TV's at prices much lower than today's HDTV. There is no evidence to believe that the new stations, forced to present only HDTV, will entice the public to buy the high priced HDTV receiver, when NTSC is readily and cheaply available. An audience of only 5% (or even 25%), is the sure road to broadcast TV bankruptcy.

3. Digital compression now offers up to 20 (!) NTSC programs in a single 6 mhz that can only contain one HDTV signal. Most surveys of the audience preferences show that they will buy quantities of programs over quality. HDTV is hopelessly outgunned.

4. Although there is some increase in the NTSC receiver price when equipped to decode the multiprogram digital signal, the positive savings in transmission gear will surely result in a lower per program charge to the viewer.

5. Progressive scan, used in HDTV, is superior to interlace used in NTSC? Says who? I personally have viewed a European demo on similar sized adjacent TVs, and the average viewer could not tell which is progressive and which is not! The progressive set was 50% higher priced.


6. The home TV should be compatible with and married to a computer with all conceivable accessories? How many households would welcome, or even accept, this intrusion into their ordered lives? perhaps two generations ahead, a computer-based educated public would buy the higher priced contraption?

7. The FCC sttempting to adopt standards states 1000 lines is the ultimate in resolution. Even today, 1000 lines is obsolete and is no longer considered a valid HDTV standard.

8. Conclusion - In view of the foregoing it is urged that a new proceeding be instituted to consider digital compression in the allocation and use of channels and the conditions to govern such utilization; that the instant proceeding be modified so as to fully explore such new developments and others; and that effects of such new developments upon the viewing public, the economy, the existing industry and programming needs be carefully investigated and considered. The time tables now inherent in this proceeding should be eliminated, or at least substantially modified to the extent required to avoid a result that appears to be calamitous.

If a new proceeding is required, petitions therefore are already on file with the Commission (see Petition for Rule Making filed August 24, 1992 by Press Broadcasting Company, Inc.) A further petition will be filed by Isaac Blonder in the immediate future seeking similar Rule Making.

Respectfully Submitted,


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Counsel for Isaac S. Blonder

January 7, 1993

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of)	
)	
Advanced Television Systems)	
and Their Impact Upon the)	MM Docket No. 87-268
Existing Television Broadcast)	
Service)	

COMMENTS OF NATIONAL CAPITAL COMMUNICATIONS, INC.

Benito Gaguine
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Its Attorney

January 7, 1993

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SUMMARY

NCCI fully supports the Commission's tentative conclusions set forth in the Notice that:

- (a) "a party challenging the renewal of an NTSC license should be permitted to file a supplemental application for the ATV channel which would be contingent upon the grant of the challenger's NTSC application;" and
- (b) "the contingent ATV application should not be subject to a second comparative hearing."

In response to the related questions posed in the Notice,
NCCI:

- (a) Urges that the Commission require that any broadcaster negotiations looking toward NTSC/ATV channel pairing specifically include pending NTSC applicants and renewal challengers, and that the Commission return to its Cameron presumption of incumbent site availability, as a means of ensuring that the ATV allotment process does not become an indirect mechanism for permanently insulating existing licensees from legitimate renewal challenges;
- (b) Does not currently see any reason for a "contingent" ATV application filed by a renewal challenger to contain more or less than that to be required of a regular ATV applicant; and
- (c) Regards these issues as of only transitory significance, of no relevance to the case of a renewal challenge filed with respect to a licensee seeking renewal of both its NTSC and ATV licenses. In view of the non-severability of those licenses, a challenger must apply for both.

In the Matter of)
)
Advanced Television Systems)
and Their Impact Upon the) MM Docket No. 87-268
Existing Television Broadcast)
Service)

National Capital Communications, Inc. ("NCCI"), by its attorney, hereby submits its Comments in response to the Commission's Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rulemaking ("Notice") herein, released October 16, 1992 (7 FCC Rcd 6924).

As pertinent to these comments, the Notice, at ¶¶ 11-13, acknowledged NCCI's June 22, 1992 Petition for Reconsideration and/or Clarification of its Second Report and Order herein, which had failed to address the status and eligibility for Advanced Television ("ATV") licenses of applicants for conventional television station construction permits whose applications are in

conflict with license renewal applicants.¹ There, the Commission expressed tentative agreement with NCCI's positions that

- (a) "a party challenging the renewal of an NTSC license should be permitted to file a supplemental application for the ATV channel which would be contingent upon the grant of the challenger's NTSC application;"
- (b) "the contingent ATV application should not be subject to a second comparative hearing.²⁵

25 NCCI Reconsideration at 3. We tentatively agree with MSTV, however, that if a renewal challenger's NTSC application fails, its contingent ATV application would also fail. MSTV Opposition at 5 n.2."

Notice, ¶12.

The Notice seeks comment upon these tentative findings, as well as upon the following related questions:

- (1) "the effect, if any, this proposal would have on our proposed ATV allotment/assignment plan, which thus far is predicated on existing sites held by existing broadcasters;"
- (2) "[what] criteria . . . should be part of any contingent ATV application;" and

¹ NCCI is an applicant for a construction permit to operate a new commercial television station in Washington, D.C., on Channel 4. Its application was filed on September 3, 1991, and was timely filed vis-a-vis the renewal application of WRC-TV. NCCI's application was accepted for filing on December 13, 1991, and assigned file number BPCT-910903KF. The NCCI and WRC-TV applications have not yet been designated for hearing.

- (3) "whether these same policies should apply to renewal challenges filed after an NTSC licensee has been awarded an ATV license and its facility is operational."

Notice, ¶13.

II. Comments

A. The "Tentative Conclusions" Are Sound

NCCI strongly supports the Notice's tentative conclusions set forth above, which are fully consistent with the Commission's overall approach to ATV licensing and implementation. However, because the Notice omits specific details of NCCI's requested clarification, NCCI repeats them in full below:

- o "That a renewal challenger be permitted, during the two-year [now three-year] period following the adoption of an ATV Table of Allotments, to file a supplemental application for an ATV construction permit for the ATV channel 'paired' with the NTSC channel which is the subject of its original application, such application to be deemed 'contingent' upon the grant of the challenger's NTSC application, and not to be considered in the existing renewal proceedings;
- o "That such contingent application not be deemed to be mutually exclusive with an ATV application for the 'paired' channel filed by the incumbent licensee, and that the incumbent's ATV application be considered without regard to the challenger's contingent ATV application;
- o "That the general rule whereby the Commission will not issue new NTSC authorizations after the award of ATV authorizations has commenced be inapplicable to timely-filed renewal challengers;
- o "That, in the event that the challenger's underlying NTSC application is granted (and the incumbent's renewal application is denied), the challenger's ATV application will become non-contingent, and may be processed to grant. (If the renewal hearing is concluded with a grant to the challenger after the incumbent has constructed and commenced operation of its ATV facilities, the incumbent may be accorded special temporary authorization to continue its ATV

operation during such period as may be entailed in processing the challenger's ATV application.)"

NCCI Petition, pp. 3-4 (footnote omitted). NCCI there submitted that these proposed clarifications

"are consistent with the overarching principle of the instant proceeding; i.e., that ATV is an enhancement of an existing service, rather than a new video service. Pursuant to that principle, a successful NTSC renewal challenger should be permitted to succeed to the ATV rights (and obligations) of the displaced incumbent, with a minimum of administrative delay and, if possible, without service disruption."

Id., page 4.

B. Impact Upon ATV Allotments

The potential impact of the foregoing "tentative" conclusions upon the Commission's ATV channel allotment plan is difficult to assess in detail, because that "plan" remains largely amorphous. While the Second Further Notice of Proposed Rulemaking released August 14, 1992 (7 FCC Rcd 5376) notes (¶¶ 35-36) that the Commission proposes to make ATV channel allotments based upon existing NTSC transmitter sites (defined as an "area within a three-mile radius of the actual transmitter location"), the "proposed allotment table" contained at Appendix D to that Notice failed to indicate with which NTSC channel each proposed ATV was paired, thus rendering impossible any analysis of the proposed table upon existing broadcasters, much less renewal challengers such as NCCI. Moreover, the "proposed allotment table" was heavily caveated:

"We emphasize that the 'first draft' ATV Table may differ significantly from the final ATV Table, depending on which

principles are ultimately used to generate the table, which ATV system is ultimately selected by the Commission, and the results of any broadcaster negotiated settlements."

Second Notice, ¶52.

Thus far, the Commission has not explicated fully the relationship between its site-specific allotment plan and "broadcaster negotiated settlements." On the surface, it would appear that a truly site-specific allotment plan would leave little or nothing to be "negotiated" by broadcasters.

It is recognized that, in its Second Report and Order/Further Notice of Proposed Rule Making released May 8, 1992 (7 FCC Rcd 3340), the Commission (at ¶25) undertook to explain why it believed that "negotiations among broadcasters should be an integral part of the ATV assignment process." There it spun out a scenario which contemplated such negotiations "nationwide or within markets based on the sample Table of Allotments" [i.e., Appendix D to the later-released Second Notice], the results of which it "would take into account . . . in preparing a proposal for the Final Table of Allotments/Assignments." (Id., note 88). Following its release of a proposed Final Table, the Commission explained (¶35) that:

"broadcasters would have a fixed period of time to negotiate with each other and submit plans for pairing NTSC and ATV channels either nationwide or on a market-by-market basis. . . . Once the period for such industry negotiations ends, if there are markets remaining where broadcasters are unable to agree on a pairing plan, the channels in those markets would be assigned on a first-come, first-served basis."

The premise for such industry negotiations thus appears to be the absence of any channel pairing underlying the expected

Final Table, an absence which appears to be inconsistent with the site-specific allotment scheme described in the Second Notice and referred to in the instant Third Notice.²

1. Renewal Challengers Must Be Accorded
Co-Equal Status at Industry Meetings
Involving ATV Channel Allotments

Assuming arguendo that negotiations among broadcasters for paired allotments continue to be a feature of the Commission's allotment scheme, it would seem to be essential that such negotiations include all pending applicants for NTSC channels -- those for new assignments as well as renewal challengers. Indeed, a failure on the Commission's part to require the inclusion of such applicants would raise serious antitrust concerns, and would be totally inconsistent with the Commission's mandate to promote full and fair competition in the television marketplace.

² We recognize that in many markets, a significant number of NTSC stations share a common transmitter site (e.g., New York City's World Trade Center, Minneapolis-St. Paul's Shoreview tower complex), so that site-specific selection of ATV channels will yield a number of channels which, from the standpoint of siting, will be fungible. This fact, however, does not ineluctably lead to the conclusion that broadcaster negotiations are necessary to arrive at NTSC/ATV channel pairings. Where such fungibility exists, the most rational pairing system would be based upon channel positioning, with the lowest NTSC channel being paired with the lowest ATV channel, based upon the fact that in both VHF and UHF, lower channels exhibit better propagation characteristics than higher channels.

The fairness of such a scheme is that it gives recognition to the likelihood that lower channel NTSC licensees are either the original television homesteaders, or have purchased their facility for a price which in part reflects the additional intrinsic value of a lower channel.

NCCI's pending application illustrates the need to include NTSC applicants -- and particularly renewal challengers -- in any negotiations for channel pairing. Because of the elimination of the Cameron presumption (see p. 8, infra), NCCI was unable to presume the availability of the existing WRC-TV (Channel 4) transmitter site. Moreover, NCCI's efforts to find another suitable site in the immediate vicinity of the WRC-TV site were unavailing; indeed, NCCI was unable to find a fully-spaced site in the Washington area. Thus, NCCI has proposed to locate its antenna on the WNVC(TV) tower in Merrifield, Virginia, and has requested a waiver of the 1.6 km short-spacing resulting from that location.

Possibly, some of the ATV channels which the Commission will ultimately allot to Washington may permit fully-spaced operation at NCCI's Merrifield site. However, given the three-mile zone chosen for ATV allotment purposes, and the nine mile distance between the WRC-TV site and NCCI's Merrifield site, it is quite probable that most of the Washington ATV allotments will not be useable at NCCI's site. It obviously would be in NCCI's interest that the ATV channel ultimately chosen for pairing with NTSC channel 4 permit operation from NCCI's Merrifield site; just as obviously, it would be in the interest of the present licensee of WRC-TV that the paired channel not be capable of use at NCCI's site. Thus, to the extent that pairings may be influenced or decided by broadcaster "negotiations," it is essential that NCCI be accorded a seat at the negotiating table.

2. "Site-Specific" ATV Allotments May Result in Creating Transmitter Site "Bottlenecks" Precluding Legitimate Renewal Challenges, Unless the Cameron Presumption Is Restored

To the extent that the Commission's ultimate ATV channel allotment approach continues to be "site-specific," it has at least the potential to endow existing television licensees with "bottleneck" control over the only feasible ATV transmitter sites, and thus the concomitant potential to foreclose legitimate license challenges. This should not be viewed as criticism of the site-specific approach to allotments, but rather as calling for the Commission to revisit its current policy³ to no longer apply the presumption of the availability to a challenger of the incumbent's site, enunciated in George E. Cameron, Jr. Communications, Inc., 71 FCC 2d 460 (1979).

As noted above, lacking the benefit of the Cameron presumption of availability of the incumbent's site, NCCI has been forced to propose a slightly short-spaced site for its Channel 4 application. It is quite possible that, because the Commission's site-specific allotment approach has been designed to protect only a relatively small area surrounding the existing NTSC site (a radius of three miles), none of the ATV channels

³ Abuses of Comparative Renewal Process, First Report and Order released May 16, 1989, 66 RR 2d 708, at 722-23; 4 FCC Rcd 4780, at 4788-89.

ultimately allotted to Washington may be located at NCCI's Merrifield site, some nine miles southwest of the present WRC-TV site. NCCI recognizes that the Commission's choice of a small three-mile zone was driven by its need to tightly "pack" the ATV allotment table in order to provide an ATV allotment for each existing NTSC assignment. However, the effect of so limiting the area for potential siting of ATV transmitters may well be to transform existing NTSC transmitter sites into "bottleneck facilities" for any current or prospective challenger to an existing licensee. That is, legitimate renewal challengers may be totally foreclosed, unless the Commission revives the Cameron presumption that the existing licensee's site would be available to a successful renewal challenger.⁴

C. The "Criteria" for Contingent ATV Applications
Should Be Consistent With Those Established
For Non-Contingent ATV Applications

The Notice seeks comment upon the question of what criteria should apply to the "contingent" ATV application filed by a renewal challenger during the pendency of its NTSC application. NCCI presumes that the Commission's question relates to the essential contents of such a contingent ATV application. Inasmuch as the Commission has not yet defined the contents to be required of non-contingent ATV applications (whether filed by

⁴ The Commission's elimination of this presumption in 1989, in a rulemaking designed to interdict "abusive" renewal challenges, was not supported by any evidence that the existence of the presumption had contributed to abuse.

existing NTSC licensees during the initial three-year period following adoption of a Final Allotment Table, or by others after that period), the context for responding to this question is lacking. Nonetheless, NCCI does not currently perceive of any reason why the required content of a contingent ATV application should be more, or less, than that of a non-contingent application. Presumably the Commission will conduct further rulemaking proceedings looking to defining the required content of ATV applications;⁵ any such proceedings should provide the context for a more detailed response to the "criteria" question posed in the instant Notice.

D. Challenges to Licensees Seeking Renewal of Both NTSC and ATV Licenses Must Apply For Both Non-Contingently, Consistent With The Commission's NTSC/ATV Non-severability Policy

NCCI believes that the questions raised in its June 1992 Petition, and the "tentative conclusions" reached in the instant Notice concerning those questions, to be of only a transitional nature, affecting only those situations where a renewal challenge is pending after a Final Allotment Table becomes effective, but prior to the licensing of ATV operations. I.e., after an NTSC licensee has also been awarded an ATV license, any subsequent

⁵ For example, it is unclear from the instant Notice that the ATV application must contain a certification of financial qualifications, as implied in the latter two-thirds of ¶26, or that financial qualifications are to be demonstrated "after applying for an ATV channel," as stated in the first sentence of that paragraph.

challenge to the renewal of those licenses would have to encompass both NTSC and ATV operations in order to be acceptable. This conclusion naturally flows from the Commission's predicate that the NTSC and ATV authorizations are not severable, as well as from its requirement that the NTSC and ATV operations be conducted in parallel until fifteen years after the Final Allotment Table is adopted, and that the signals be simulcast during a significant portion of that period.⁶

III. Conclusion

NCCI fully supports the Commission's tentative conclusions set forth in the Notice. It urges that the Commission require that any broadcaster negotiations looking toward NTSC/ATV channel pairing specifically include pending NTSC applicants and renewal challengers, and that the Commission return to its Cameron presumption of incumbent site availability, as a means of ensuring that the ATV allotment process does not become an indirect mechanism for permanently insulating existing licensees from legitimate renewal challenges.

⁶ But see Second Report, ¶51 (7 FCC Rcd 3340, at 33 : "If it is technically possible, a broadcaster [which has failed to apply for and/or to construct an ATV facility within the periods established] may also use its existing NTSC frequency for this purpose ['to switch directly to an ATV channel at the time of conversion']. The meaning of this statement is not apparent, given the Commission's consistent position that at the time of conversion, existing NTSC channels shall be surrendered.

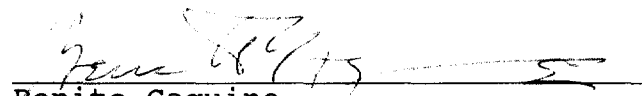
Although it is not clear what the Commission will require an ATV application to contain, NCCI does not currently see any reason for a "contingent" ATV application filed by a renewal challenger to contain more or less than that to be required of a regular ATV applicant.

Finally, NCCI regards these issues as of only transitory significance, of no relevance to the case of a renewal challenge filed with respect to a licensee seeking renewal of both its NTSC and ATV licenses. In view of the non-severability of those licenses, it seems clear that a challenger must apply for both.

Respectfully submitted,

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Its Attorney

January 7, 1993